A **DATO' SERI MOHAMMAD NIZAR JAMALUDDIN**

v.

SISTEM TELEVISYEN MALAYSIA BHD & ANOR

B HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[CIVIL SUIT NO: 23 NCvC-84-07-2012]
12 APRIL 2013

C ***TORT:*** *Defamation - Libel - Publication in news report - Tweets in Twitter account - Allegations against Sultan of Johor - Whether words complained of capable of bearing defamatory meaning - Whether referred to plaintiff - Whether had tendency to lower plaintiff in estimation of right thinking members of society - Whether defence of justification, qualified*
D *privilege and fair comment applicable - Defamation Act 1957, s. 8*

TORT: *Defamation - Defences of justification, fair comment and qualified privilege - Publication in news report - Tweets in Twitter account - Allegations against Sultan of Johor - Whether defendants proven that*
E *plaintiff made such allegations - Whether any reasonable man would conclude that plaintiff's tweet messages indirectly hinted on Sultan of Johor - Whether defences established*

This was the plaintiff's claim against the defendants for defamation resulting from the defendants' publication in the Buletin Utama
F TV3 news report ('Buletin Utama') of materials regarding the plaintiff's tweets on 28 May 2012 *vide* his Twitter account. It was the plaintiff's allegation that the words used in the Buletin Utama were defamatory of the plaintiff because the publication conveyed the meaning or imputations, *inter alia*, that (i) he was a traitor
G against the Sultan of Johor; (ii) he was an anti-Sultan politician; (iii) he had committed a criminal offence; and (iv) he accused the Sultan of misusing public funds in securing the bid for the number plate WWW1 at a price of RM520,000. The plaintiff further contended that the defendants had gone far beyond the contents
H of the plaintiff's tweets and the defendants' defamatory statements had the tendency to lower the plaintiff in the estimation of the right-thinking members of society and exposed him to hatred, ridicule or contempt. Asserting the defence of justification, the defendants submitted that the words in the Buletin Utama were
I true in substance and in fact, the plaintiff had made such an allegation against the Sultan of Johor. The defendants also pleaded the defence of qualified privilege and fair comment.

Held (dismissing plaintiff's claim):

(1) The burden of proof was on the plaintiff to show that (i) the statements or words complained of were capable to have or had the tendency of bearing a defamatory meaning; (ii) the statements or words referred to the plaintiff; and (iii) the statements or words which formed the subject matter of the action had been published. (para 11)

(2) By comparing the plaintiff's tweets with the words complained of in the defendants' publication, it was clear that the plaintiff was merely tweeting, with no mention of the person who is the subject matter of the tweets. On the other hand, it was without doubt that the defendants had gone far beyond the contents of the plaintiff's tweets. Nowhere did the plaintiff refer to any specific person, in particular, the Sultan of Johor, in his tweets regarding the RM520,000 being used to bid for the registration of the number plate WWW1. Neither was there any direct allegation or accusation by the plaintiff against the Sultan of Johor in using public funds to bid for the same number plate. (paras 18 & 19)

(3) The defendants further published the news report that the plaintiff had made an apology in his tweet regarding his statements. This was factually incorrect and not true. The plaintiff confirmed that he had never made any apology through Twitter. Hence, the defendant's publication, considered in the natural and ordinary meaning of the words used, and having regard to the ordinary intelligence and knowledge of worldly affairs that a reasonable man on the street possesses, were defamatory of the plaintiff. Having regard to the plaintiff's position as a prominent politician, the publication was totally damaging to the plaintiff's image, reputation and career. (paras 20, 21 & 23)

(4) The defence of justification would succeed if the defendants were able to show that the plaintiff had indeed substantially made such an allegation against the Sultan of Johor. On the facts, it was more probable that the plaintiff was insinuating through his tweet messages that the Sultan should not be using the RM520,000, which are public funds. Any reasonable

man would conclude that the plaintiff's tweet messages were indirectly hinting at or alleging that the Sultan of Johor had used public funds to make the bid for WWW1. Hence, the defendants had succeeded in their defence based on justification. (paras 31, 36, 37 & 49)

(5) Although it was clear that the defendants did not practice responsible journalism in verifying with the plaintiff regarding his tweet messages and getting his comments on the matter, there did not appear to be any malice on the part of the defendants to publish the news report. In the circumstances, the court was more inclined towards allowing the defendants to be relieved from any liability for defamation of the plaintiff. (paras 55, 56 & 58)

(6) The defendants had also satisfied the four ingredients to justify their defence of fair comment, *ie*: (i) the words complained of are comments and not facts; (ii) there was a basis for the comments; (iii) the comments were of public interest; and (iv) the comments were made honestly and without malice. (paras 59 & 61)

Case(s) referred to:

Adam v. Ward [1917] AC 309 ***(refd)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Chew Peng Cheng v. Anthony Teo Tiao Gin [2008] 8 CLJ 418 HC ***(refd)***

Chong Swee Huat & Anor v. Lim Shian Ghee T/A L & G Consultants & Education Services [2009] 4 CLJ 113 CA ***(refd)***

Dato' Seri Anwar Ibrahim v. Dato' Seri Dr Mahathir Mohamad [1999] 7 CLJ 32 HC ***(refd)***

Edward v. Bell [1824] 1 BING 403 ***(refd)***

Hajijah Bana v. Ramli Usop [2000] 6 CLJ 184 HC ***(refd)***

Lim Guan Eng v. Utusan Melayu (M) Bhd [2012] 2 CLJ 619 HC ***(refd)***

Reynolds v. Times Newspapers Ltd and Others [2001] 2 AC 127 ***(refd)***

Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd [2010] 7 CLJ 885 HC ***(refd)***

Too Good v. Spyring [1834] 1 CM & R 193 ***(refd)***

Legislation referred to:

Defamation Act 1957, s. 8

Other source(s) referred to:

Gatley on Libel & Slander, 8th edn, p 691

Halsbury's, Laws of England, 4th edn, para 10, p 7

For the plaintiff - Mohd Fitri Asmuni (Mohd Zamri Ibrahim with him); M/s Awi & Co
For the defendants - Liew Teck Huat (Lim Qi Si & Wee Jason with him); M/s TH Liew & Partners

Reported by Kok Fie See

JUDGMENT

Yeoh Wee Siam J:

[1] This is an action filed by the plaintiff against the defendants resulting from the defendants' publication in the Buletin Utama TV3 news report ("Buletin Utama") of materials regarding the plaintiff's tweets on 28 May 2012 in his Twitter account.

[2] The plaintiff is a member of parliament, a member of the State Legislative Assembly of Perak for Pasir Panjang, a member of the Central Committee of Parti Islam Semalaysia ("PAS") and the Head of the Opposition Pakatan Rakyat for Perak.

[3] The first defendant is a broadcasting television ("TV") company.

[4] The second defendant is sued in her capacity as the publisher of Buletin Utama for 30 May 2013 which was broadcasted in the TV3 channel at 8pm.

Enclosure 1

[5] In the writ of summons and statement of claim, the plaintiff is claiming against the defendants:

(a) Damages in the sum of RM50 million including aggravated damages and/or exemplary damages for libel and/or slander;

(b) An injunction to restrain the defendants, and/or their employees and/or whoever publishes the defamatory news or any publication that has an effect on the plaintiff orally or in the print media and/or electronic media;

(c) An order that the defendants publish an open apology to the plaintiff in Buletin Utama in the form and according to the rules determined by the plaintiff;

(d) Costs; and

(e) Other reliefs deemed appropriate by the court.

The Plaintiff's Tweets On 28 May 2012

[6] The plaintiff through his Twitter account on 28 May 2012 tweeted the following three statements:

> **YB Mohammad Nizar**
>
> rm520K boleh dibelanjakan membantu rakyat melayu johor yang masih ramai miskin serta memerlukan bantuan utk kprluan hidup, bina 20 rumah pprt!;
>
> **YB Mohammad Nizar**
>
> but if comparing 24million diamond ring by rosmah, then RM520k 4 WWW1 reg plate is nothing! But how does 1 justify that purchase MFatwaKeb?;
>
> **YB Mohammad Nizar**
>
> rm520k utk no plate www1, Xkan nak letak kat kereta proton atau motor kut? Ramai lagi rakyat yang masih kais pagi mkn pagi kais ptg mkn petang!

The Defendants' Publication In Buletin Utama On 30 May 2012

[7] The full transcript of the news published by the defendants in Buletin Utama at 8pm on 30 May 2012 (ABOD pp. 10 and 11), read by the two news presenters, Nur Jamalina Mohd Jamali and Kamarudin Mape, states the following:

> **Nur Jamalina Mohd Jamali:**
>
> Polis menubuhkan *satu pasukan khas untuk menyiasat tuduhan ADUN Pasir Panjang, Datuk Seri Mohammad Nizar Jamaluddin, kononnya Sultan Johor menggunakan wang rakyat untuk membida nombor pendaftaran WWW1*.
>
> **Kamarudin Mape:**
>
> Menurut Ketua Polis Johor, Datuk Mohammad Mokhtar Shariff, kes disiasat mengikut Akta Hasutan.

Ketua Polis Johor, Datuk Mohammad Mokhtar Shariff:

Sehingga petang ini, polis Johor telah menerima lapan laporan polis. Jadi kita telah menubuhkan satu pasukan khas yang diketuai oleh ketua polis daerah Johor Bharu Utara, Assistant Komisioner Polis Roslan. Kita akan melengkapkan kertas siasatan secepat mungkin.

Nur Jamalina Mohd Jamali:

Individu dan pihak berkaitan katanya, akan dipanggil untuk membantu siasatan.

Kertas siasatan akan diserahkan kepada pejabat Timbalan Pendakwa Raya sebaik siasatan selesai.

Datuk Seri Nizar sebelum ini mencetuskan kemarahan rakyat Johor apabila kenyataan menerusi Twitternya menuduh Sultan Johor, Sultan Ibrahim menggunakan wang rakyat untuk membida nombor pendaftaran WWW1 bernilai 520 ribu ringgit.

Jumlah itu katanya, lebih baik digunakan untuk membantu golongan miskin.

Tuduhan itu kemudian disangkal Tengku Mahkota Johor, Tunku Ismail Idris yang bertitah, baginda dan ayahanda baginda tidak pernah menerima wang yang diberi kerajaan.

Sebaliknya semua wang yang diperuntukkan untuk kerabat Diraja Johor disalurkan kepada Yayasan Ibrahim dan Yayasan Iskandar untuk bantuan kepada rakyat dan kerajaan negeri.

Sehubungan itu, Datuk Seri Nizar diminta selidik terlebih dahulu sebelum mengeluarkan kenyataan.

Kamarudin Mape:

Sementara itu, Pemuda Umno Pulai dan beberapa pertubuhan bukan kerajaan membuat laporan polis terhadap Datuk Seri Nizar.

Laporan dibuat setiausaha kerja Pemuda Umno Pulai Asyik Rahmat di Balai Polis Tampoi, malam semalam.

Selain membuat laporan bagi membolehkan polis menjalankan siasatan, mereka juga mendesak Datuk Seri Nizar memohon maaf secara terbuka.

Kenyataan Datuk Seri Nizar dianggap sebagai biadap terhadap Sultan Johor dan mereka sebagai rakyat Johor amat marah dan tersinggung dengan kenyataan ADUN Pasir Panjang itu.

Nur Jamalina Mohd Jamali:

Sementara itu Datuk Seri Nizar menerusi Twitternya memohon maaf berhubung kenyataan yang dikeluarkannya. Beliau turut menafikan kenyataan itu berbaur hasutan.

Apa yang dinyatakan sebelum ini tidak sama sekali mempertikaikan keputusan Sultan Johor untuk membida Nombor Pendaftaran itu dengan harga tertinggi.

Kenyataan itu katanya, dibuat hanya secara umum atas pandangan sebagai seorang rakyat. (emphasis added)

[8] The plaintiff contended that the news report under the heading "Pasukan Khas Siasat Dakwaan Nizar" together with a photograph of the plaintiff were published in the defendants' said Buletin Utama.

[9] The plaintiff is suing the defendants for the alleged defamatory words, which I have restated above in bold and underlined, as averred in para. 5 of the statement of claim.

The Law On Defamation

[10] A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business (see *Halsbury's Laws of England* 4th edn. p. 7, para. 10).

[11] The burden of proof is on the plaintiff to show that:

(a) the statements or words complained of were capable to have or had the tendency of bearing a defamatory meaning;

(b) the statements or words referred to the plaintiff; and

(c) the statements or words which formed the subject matter of the action had been published (see *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321).

[12] It is only after the three elements required of the plaintiff had been satisfied, would the burden then shift to the defendants, to prove on credible evidence the pleaded defence of the defendants and/or that the alleged words or statement were not defamatory (see *Lim Guan Eng v. Utusan Melayu (M) Bhd* [2012] 2 CLJ 619 at p. 626).

[13] I shall now consider (b) and (c) above first, followed by (a).

(b) Whether the statement or words referred to the plaintiff; and

(c) Whether the statements or words which formed the subject matter of the action had been published.

[14] It is not in dispute between the two parties that the statement or words in the news report in Buletin Utama on 30 May 2012 refer to the plaintiff.

[15] Neither is it in dispute that the alleged defamatory words had been published ie, broadcasted in the defendants' Buletin Utama news slot at 8pm of 30 May 2013.

(a) Whether the statements or words complained of were capable to have or had the tendency of bearing a defamatory meaning

[16] In para. 7 of the plaintiff's statement of claim, the plaintiff averred that the news published by the plaintiff is defamatory and/or is libel against the plaintiff since it refers to the plaintiff and in its natural and ordinary meaning and/or by way of insinuation and innuendo, if read together and/or separately, carries the meaning and is understood, amongst others, the following as stated in sub-paras. 7(a) to (i) of the statement of claim:

(a) Plaintif adalah seorang penderhaka kepada Sultan Johor;

(b) Plaintif adalah seorang ahli politik yang anti-sultan;

(c) Plaintif seorang ahli politik yang cuba menghasut rakyat untuk membenci Sultan Johor;

(d) Plaintif telah melakukan satu kesalahan jenayah;

(e) Plaintif menuduh Sultan Johor telah menyalahguna wang rakyat dalam pembelian nombor plat WWW1 yang dibida pada harga RM520,000;

(f) Plaintif menuduh Sultan Johor telah mencampuri dan mengawal pentadbiran kerajaan negeri Johor untuk kepentingan peribadi Sultan Johor;

(g) Plaintif menuduh Sultan Johor telah menyalahgunakan kapasitinya sebagai Sultan untuk menyalahguna wang rakyat untuk kepentingan peribadinya sendiri;

(h) Plaintif menuduh Sultan Johor terlibat dengan rasuah salahguna kuasa;

(i) Plaintif menuduh Sultan Johor menjadikan kerajaan negeri sebagai kuda tunggangan baginda untuk mencapai objektifnya sendiri.

[17] At this stage, by comparing the plaintiff's three tweets with the words complained of in the defendants' publication, it is clear that the plaintiff was merely tweeting, with no mention of the person who is the subject matter of the tweets, the following:

(i) RM520k can be spent to assist so many Johor Malay people who are still poor who need assistance for their daily necessities, or to build 20 "pprt" houses (ie, low cost houses for the lower income group);

(ii) But, if comparing 24 million diamond ring by Rosmah, then RM520k for WWW1 registration plate is nothing! But now does one justify that purchase? "MFatwaKeb"?;

(iii) RM520k for a no. plate WWW1, surely it is not to place it on a proton car or "motor kut"? Many people barely have enough for their daily subsistence.

[18] However, in the words complained of, the defendants published in Buletin Utama that:

(i) A special task force has been established to investigate the allegations of State Legislative Assembly member for Pasir Panjang, Datuk Seri Mohammad Nizar Jamaluddin, that apparently the Sultan of Johor had used public funds to bid for the registration number WWW1; and

(ii) Datuk Seri Nizar before this had incurred the wrath of the Johor people when through his Twitter statement accused the Sultan of Johor, of using public money to bid for the Registration No. WWW1 valued at RM520k.

[19] From the above comparison of the plaintiff's tweets and the defendants' publication, it is without doubt that the defendants had gone far beyond the contents of the plaintiff's tweets. Nowhere did the plaintiff refer to any specific person, in particular, the Sultan of Johor, in his three tweets regarding the RM520k being used to bid for the registration number plate, WWW1 ("the number plate"). Neither was there any direct allegation or accusation by the plaintiff against the Sultan of Johor in using public funds to bid for the same number plate. The words "menuduh" and "menggunakan wang rakyat" as published by the defendants were added by the defendants themselves because nowhere do such words appear in the plaintiff's tweets. The defendants further published the news that the accusation of the Sultan of Johor using public funds to bid for the number plate was later denied by the Crown Prince of Johor who, through his Twitter, stated that the Sultan had never received money from the government. Instead, all moneys allocated to the Johor Royalty were channelled to Yayasan Ibrahim and Yayasan Iskandar to assist the people and the State Government.

[20] The defendants further published the news report that the plaintiff had made an apology in his tweet regarding his statements. This is factually incorrect and not true. The plaintiff confirmed that he had never made any apology through Twitter.

[21] The court finds that the defendants' publication, considered in the natural and ordinary meaning of the words used, and having regard to the ordinary intelligence and knowledge of worldly affairs that a reasonable man on the street possesses, are defamatory of the plaintiff.

[22] The defendants' publication of the news is clearly defamatory of the plaintiff to the extent as averred by the plaintiff in para. 7 of the statement of claim ie, it conveys the following meaning or imputations, that:

(a) He is a traitor against the Johor Sultan.

(b) He is an anti-Sultan politician.

(c) He is a politician who incites hatred against the Sultan.

(d) He has committed a criminal offence.

(e) He accused the Sultan of misusing public funds in securing the bid for the number plate WWW1.

(f) He accused the Sultan of interfering with the Johor State administration to advance his (the Sultan's) personal interest.

(g) He accused the Sultan of misuse of power and corruption.

(h) He accused the Sultan of using the State Government as a platform to achieve his own personal interest.

[23] The Buletin Utama news report was aired throughout the country, with a few million viewers watching it at prime time. It is clear that the defendants' defamatory statements have the tendency to lower the plaintiff in the estimation of the right-thinking members of society and expose him to hatred, ridicule or contempt. The plaintiff is a prominent politician and opposition leader, as can be seen in the numerous high positions that he holds, in parliament and at state level. It is without doubt that the defendants' publication is totally damaging to the plaintiff's image, reputation and career.

The Defendants' Defence

Jusfication

[24] Under common law, it is not necessary to prove the truth of every single allegation in the allegedly defamatory statement for the defence of justification to prevail. In *Edward v. Bell* [1824] 1 BING 403 Burrough J stated that the defence "must be justified as meets the sting of the charge."

[25] In the Malaysian context, s. 8 of the Defamation Act 1957 provides:

> **Justification**
>
> 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

[26] In *Dato' Seri Anwar Ibrahim v. Dato' Seri Dr Mahathir Mohamad* [1999] 7 CLJ 32, RK Nathan J (as he then was), in addressing the defence of justification, stated at p. 39:

It is settled law that in a suit for defamation, justification is a complete defence, if the same is available to the defendant.

At common law the defendant was required to prove the truth of all the material statements in the libel. However, by virtue of s. 8 of the Defamation Act 1957 (the act) the defence of justification "shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges". It follows therefore that what is true, cannot be defamatory. This must be on grounds of public policy because the exposure of truth must be paramount when compared to that of reputation.

[27] In *Chong Swee Huat & Anor v. Lim Shian Ghee T/A L & G Consultants & Education Services* [2009] 4 CLJ 113; [2009] 3 MLJ 665 Zainun Ali JCA (as she then was) after referring to s. 8 of the Defamation Act 1957 stated at (p. 710) MLJ; (p. 169) CLJ:

In other words, a purposive approach is taken in interpreting Section 8 – when for a defence of justification to be upheld, it is not necessary to prove the truth of every word in the statement said to be defamatory. What is relevant is actually the truth of the imputation of the overall statement.

[28] Similarly, in *Chew Peng Cheng v. Anthony Teo Tiao Gin* [2008] 8 CLJ 418; [2008] 5 MLJ 577, Hamid Sultan JC (as he then was) at p. 431 (CLJ) at p. 592 (MLJ) noted that the plea of justification does not require every word of the alleged libel to be proved:

In a plea of justification, it is essential for the defendant to prove that (i) the defamatory imputation is true (ii) justify the precise imputation complained of and (iii) prove the truth of all the material statements in the libel. There must be substantial justification of the whole libel. However, it is not necessary to prove the truth of every word of the libel (see *Workers Party v. Tay Boon Too* [1975] 1 MLJ 47). Further it is not necessary to prove the truth of every charge if the words not proved to be true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges.

[29] It is the plaintiff's case that the Buletin Utama wrongly accused him of making the allegation that the Sultan of Johor had used public funds to bid for WWW1.

[30] The defendants submitted that the words in the Buletin Utama are true in substance and in fact.

[31] If the defendants are able to show that the plaintiff had indeed substantially made such an allegation against the Sultan of Johor, then the defence of justification would succeed.

[32] The defendants contended that the plaintiff did, in his tweet messages, launch the criticism against the Sultan of Johor for having indulged in the extravagance of bidding RM520,000 for the number plate. The plaintiff stated that the money would be better spent in helping the poor eg, to build "20 rumah pprt".

[33] The question is whether the plaintiff was indeed accusing the Sultan of Johor of using public funds to make the bid for WWW1.

[34] It is true, as submitted by counsel for the defendants, that if the Sultan of Johor was using his own money to bid for WWW1, it is his own personal right. It is his own money. There is no question of using that money to help the public. It is only possible to criticise the Sultan for his bid if he had used public funds.

[35] In his re-examination, the plaintiff stated that as an opposition policitian, a member of the State Legislative Assembly Perak, and former Menteri Besar of Perak, including being a committee member for the PAS Centre, he felt that RM520,000 would be better ("elok") used for the poor "rakyat" more so when he had read about the previous statement made by the consort of the Sultan of Johor, in the Star newspaper, that there are many poor people in Johor eg, the flood victims standing in line to receive RM500 and she would not buy a designer handbag that costs RM90,000 because the purchase is sinful considering how many families would the cost of that handbag feed. The plaintiff said that such statement had influenced him to make the tweets.

[36] The court is of the view that it is highly improbable that the plaintiff, after being influenced by the above statement of the consort of the Sultan of Johor, would tweet about the Sultan spending the RM520,000 for the bid if the plaintiff was merely referring to the personal funds of the Sultan being used. For after

all, the plaintiff has no moral or legal obligation or duty to check on the alleged personal extravagance of the Sultan. It is more probable that the plaintiff, being a politician, was insinuating through his tweet messages that the Sultan should not be using the RM520,000, which are public funds, since such funds would be better used to build 20 "pprt" houses for the poor people. By referring to "pprt" houses, it is clear that the plaintiff was not referring to the personal funds of the Sultan because it would be uncalled for and illogical for the plaintiff to suggest that such personal funds should be used for building those houses when there is no personal obligation on the part of the Sultan to build those houses with his own money.

[37] Therefore, any reasonable man would conclude that the plaintiff's tweet messages were indirectly hinting at or alleging that the Sultan of Johor had used public funds to make the bid for WWW1.

[38] It should be noted here that the plaintiff's tweet messages on 28 May 2012 drew various responses.

[39] Almost immediately after the tweet statements were published by the plaintiff, the Crown Prince of Johor on 28 May 2012 itself made his tweet statement expressing his displeasure and stating that the Royal Family had not used a single cent of the government funds allocated to them. Instead, all such funds were channelled into the Yayasan Iskandar and Yayasan Ibrahim to help the people of Johor.

[40] It is highly improbable, as contended by the plaintiff, that the Crown Prince was not responding to the plaintiff's tweets but was in fact responding to the Kosmos newspaper's cartoons that were published in print from 28 May 2012 to 31 May 2012. Those cartoons are caricatures which were poking fun at the issue of the WWW1 bid *per se*. There was no suggestion at all made in those cartoons that the money for the bid should be used for the public. In fact, the plaintiff himself confirmed that one and a half months before the plaintiff's tweets, the Kosmos newspaper had already run the story about the WWW1 bid, with criticism. The announcement of the successful bidder for WWW1 was made on Thursday, 24 May 2012. So, according to the plaintiff, Kosmos had run the story long before his tweets. The Crown Prince did

not post any tweet until the plaintiff's tweets were sent on 28 May 2012. Therefore, it is without doubt that the Crown Prince's tweet message was a direct response to the plaintiff's tweet messages. In fact, the Crown Prince ended his tweet with the words, "So before you open your mouth, do your research." This clearly shows that the Crown Prince was actually referring to the plaintiff, and not to the Kosmos newspaper.

[41] As submitted by counsel for the defendants, the other social media also joined in the fray. The Star Online dated 29 May 2012 (which is one day before the Buletin Utama) then picked up the issue. In its report entitled "Johor Tengku Mahkota hits out at critics of WWW1 bid", it is expressly stated that the Crown Prince was responding to the plaintiff's criticism in his tweet messages (see ABOD pp. 22 to 23).

[42] The New Straits Times report dated 30 May 2012 (ABOD p. 24) was entitled "Police to probe Nizar's WWW1 statement".

[43] The Yahoo News Report dated 30 May 2012 was entitled "UMNO Youth and NGOs lodge report against Mohammad Nizar" (ABOD pp. 33 to 36).

[44] The Utusan Kini report dated 30 May 2012, entitled "Datuk Seri Mohammad Nizar Jamaluddin – Disiasat WWW1", similarly connects the Crown Prince's tweet message to the plaintiff's tweet messages (see ABOD pp. 26 to 32).

[45] The court agrees with the defendants' submission that the plaintiff's tweet messages, read and understood by any reasonable man, clearly insinuate that the Sultan of Johore had used public funds for the WWW1 bid. The court is unable to agree with the plaintiff's suggestion that the plaintiff's tweets must be construed literally and entirely divorced from any inferences, implications and the normal understanding of a reasonable man. That would be artificial and unreal considering that the plaintiff's tweet messages created intense interest amongst members of the public.

[46] The defendants admitted that the plaintiff did not publish any apology in his Twitter. Therefore, the defendants did make a mistake in publishing in the Buletin Utama news report that the plaintiff made such an apology through his Twitter. However, the defendants pointed out that the plaintiff did make a public apology, which he gave through his press statement, and which was covered by the press.

[47] The Star Online dated 31 May 2012 (ABOD pp. 37 and 38), entitled "Nizar says sorry over remarks on Johor Sultan's WWW1 bid", reported that the plaintiff offered "a thousand apologies if his remarks on the Johor royalty's successful bid for the car registration number WWW1 had caused hurt and disappointment" and that he was "heart-stricken by claims that his remarks were seditious". It is to be noted that in his unreserved apology, the plaintiff did not even make any attempt to refute the various earlier press statements stating that he had accused the Sultan of Johor of using public funds to make the WWW1 bid. One can therefore reasonably infer that the plaintiff himself accepted that his tweet messages carried the insinuation that the Sultan of Johor had made the bid using public funds.

[48] Other than the mistake made by the defendants in reporting the news that the plaintiff made an apology through his Twitter, the court finds that the Buletin Utama news report is, for the greater part of it, substantially true, in fact. In applying s. 8 of the Defamation Act 1957, the court is satisfied that the defendants' defence shall not fail even if the last part of the news regarding the plaintiff's apology in Twitter is erroneous.

[49] Going by the foregoing, I hold that the defendants have succeeded in their defence based on justification. The defence of justification is a complete defence. On this ground alone, the plaintiff's claim ought to be dismissed.

Qualified Privilege And The Defence Under The Reynolds Principles

[50] Qualified privilege can only be invoked if there is a duty on the part of the maker of a statement to publish it. There must be a corresponding interest on the part of the person to whom the statement is made, to receive it. Truth is not a pre-requisite to the defence of qualified privilege. If the statement turns out to be false, then the defence is required. The defence can only succeed if the defendants can show that there is no malice in reporting the alleged defamatory statement.

(See *Adam v. Ward* [1917] AC 309, *Too Good v. Spyring* [1834] 1 CM & R 193, and *Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd* [2010] 7 CLJ 885.)

[51] The *Reynolds* defence, arising from the House of Lords' case, *Reynolds v. Times Newspapers Ltd and Others* [2001] 2 AC 127 is founded on the two main principles of publication in the public interest and responsible journalism.

[52] The defendants are able to establish that they have a duty to disseminate the information on the plaintiff's tweet messages which is of public interest considering that it was, in the words of DW1, the "hot topic" at that time. The members of the public have a corresponding interest in receiving such information.

[53] The next question is whether the defendants had practised responsible journalism and acted reasonably in the publication of the Buletin Utama news report. The House of Lords in *Reynolds (supra)* laid down some guidelines, which are not exhaustive, to determine reasonableness:

(1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

(2) The nature of the information, and the extent to which the subject matter is of public concern.

(3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.

(4) The steps taken to verify the information.

(5) The status of the information. The information may have already been the subject of an investigation which commands respect.

(6) The urgency of the matter. News is often a perishable commodity.

(7) Whether comment was sought from the plaintiff. He may have the information that others do not possess or have not disclosed. An approach to the plaintiff may not always be necessary.

(8) Whether the article contained the gist of the plaintiff's side of the story.

(9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of facts.

(10) The circumstances of the publication, including the time.

[54] Applying the above reasonableness tests, the court finds the following:

(1A) the allegations of the defendants made in the Buletin Utama news report are serious and can harm the plaintiff's reputation and career as a politician;

(1B) the matter is of great public concern to the point that even the Pulai UMNO Youth and several Non-Governmental Organizations ("NGOs") have lodged police reports against the plaintiff for his tweet messages, and the police had to set up a special team to investigate the matter;

(3A) the defendants relied on the plaintiff's own tweet messages as the source of their information for their publication;

(4A) the defendants admitted that they failed to verify the information with the plaintiff himself on the ground that the plaintiff's tweet messages are self explanatory;

(5A) the information is sensitive because at that point the Pulai UMNO Youth and NGOs were already complaining to the police about the plaintiff's tweet messages in relation to his allegations against the Sultan of Johor. The Head of the Johor Police and the Inspector General of Police were already cautioning the members of the public not to make unnecessary statements but to leave the police to complete their investigations;

(6A) there was urgency in the publication of the news considering that it was the "hot topic" at that time and members of the public are concerned and would like to know more about it;

(7A) the defendants did not seek any comments from the plaintiff personally. They merely relied on the plaintiff's tweet messages and put the news regarding the tweet messages, but not the actual tweet messages, together with the plaintiff's photograph and news of other police reports lodged against the plaintiff, the police setting up the special team to investigate possible sedition by the plaintiff, the Crown Prince's tweet response, and the plaintiff's apology in Twitter;

(8A) the defendants' news report did not just contain a gist of what the plaintiff stated in his tweets, but went and added other words such as "menuduh" and "menggunakan wang rakyat" which the plaintiff did not say in his tweets;

(9A) the article was read in the usual manner by the two news presenters of the defendants on the daily 8pm slot for the Buletin Utama. However, the presentation was rather eye catching and dramatic, with some tone of sensationalizing the news.

(10A) the timing of the publication was perfect. The publication was at the right time when the topic was hot, and the public were all ears to hear the news. The defendants were clearly discharging their responsibility to disseminate the news in a timely manner.

[55] From the above, it is clear that while the news report is of public interest and the defendants have a duty to publish the news of the plaintiff's tweet messages, the defendants did not practise responsible journalism in verifying with the plaintiff himself regarding his tweet messages and getting his comments on the matter. The defendants' publication was lop-sided, leaning towards giving a negative impression about the plaintiff even before the police have completed their investigations. It should be noted that until today the Public Prosecutor has not preferred any charge against the plaintiff for sedition or other criminal offence. The defendants' publication had certainly put the plaintiff in a tight spot, with such wide publicity, at a time when there was already a strain in his relationship with the Johor Royalty.

[56] The only mitigating factor for the defendants is that there does not appear to be any malice on their part to publish the news report. The plaintiff contended that the TV3 and/or the defendants are the mouth piece of the UMNO and that the majority of the first defendant's shares are owned by prominent UMNO leaders. However, the plaintiff failed to produce concrete evidence on this. No company search result was tendered to prove such shareholding. On the other hand, DW1, testified that the defendants did not just publish reports in favour of any political party or personalities, or publish UMNO news in a good light, but in several instances they had published news and

chastised the UMNO for their shortcomings eg, coverage of the National Feedlot Corporation, and the Khir Toyo stories regarding the former Menteri Besar of Selangor DE.

[57] This court has the delicate task of balancing the interests of the plaintiff and that of the defendants. In a developing country like ours, moving towards achieving vision 2020 and striving to make a name for our nation as one with a mature and civil society, I am of the view that there should be freedom on the part of the plaintiff to tweet his personal messages in his own Twitter account for as long as the laws on defamation and sedition and other laws of the land are not breached. Similarly, the defendants should be given the freedom to report news in a transparent and impartial manner, with the leeway to raise queries or even call for investigations as permitted under the *Reynolds* principles.

[58] However, I need to emphasise here that earlier on in this judgment, I had held that the complete defence of justification of the defendants is allowed, and the plaintiff's action ought to be dismissed on that ground. With that decision, even with the current finding, under the defence of qualified privilege and the *Reynolds* defence, that to some extent the defendants had failed to practise responsible journalism by not verifying with the plaintiff on his tweet messages, such failure is mitigated by the absence of malice on the defendants' part. Therefore, the court is more inclined towards allowing the defendants to be relieved from any liability for defamation of the plaintiff.

Fair Comment

[59] The ingredients which must be established for this defence of fair comment to succeed are:

(i) the words complained of are comments and not facts;

(ii) there is a basis for the comments;

(iii) the comments are of public interest; and

(iv) the comments are made honestly and without malice.

(See *Hajijah Bana v. Ramli Usop* [2000] 6 CLJ 184).

[60] *Gatley On Libel & Slander*, 8th edn. at p. 691 stated:

> ... On such matters, it is desirable that all should be able to comment freely, and even harshly, so long as they do so honestly and without malice.

[61] Regarding this defence of fair comment, I am in agreement with counsel for the defendants that the defendants have satisfied the above four ingredients to justify their defence:

(i) the words complained of are comments and not facts:

The defendants' Buletin Utama news report of 30 May 2012 has met this requirement. The defendants' report conveys the following:

(a) The plaintiff had "kononnya" accused the Sultan of Johor of using public funds to bid for the number plate.

(b) The plaintiff had incurred the wrath of the "rakyat" in making his statement *via* Twitter.

(c) The statement had also led to police investigations on possible sedition.

The defendants' statements are comments or opinion, but they are not facts. The defendants reported that the plaintiff had purportedly accused the Sultan of Johor of using public funds. That clearly is a comment, as opposed to a fact. The expression that the plaintiff's statement had resulted in public displeasure is also a comment. On the whole, the court finds that the Buletin Utama news report comes across as expressions of comments by the defendants.

(ii) there is a basis for the comments:

The defendants have a basis for its Buletin Utama news report ie, the plaintiff's messages tweeted *via* Twitter.

(iii) the comments are of public interest:

It is clear from the earlier defence of qualified privilege and the *Reynolds* defence that the subject matter of the news report is one of public interest.

(iv) the comments are made honestly and without malice:

As I had found earlier under the defence of qualified privilege and the *Reynolds* defence, there is no evidence of malice on the defendants' part.

[62] The court finds that the defence of fair comment on a matter of public interest has been clearly made out by the defendants.

[63] Based on the above considerations, the court dismisses the plaintiff's action against the defendants. Costs are to be borne by the respective parties.

[64] I do not think that costs should be awarded to the defendants considering that they are only relieved from liability for the defamatory statements made against the plaintiff due to their defence which was allowed by the court.